

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street – Suite 200
Boston, MA 02114
617-979-1900

ERNEST S. BELL,
Appellant

v.

HUMAN RESOURCES DIVISION,
Respondent

Docket Number:

B2-24-180

Appearance for Appellant:

Ernest S. Bell
Pro Se

Appearance for Respondent:

Erik Hammarlund, Esq.
Labor Counsel
Human Resources Division
100 Cambridge Street, Suite 600
Boston, MA 02114

Commissioner:

Paul M. Stein

SUMMARY OF DECISION

The Commission dismissed the examination appeal of a Brockton Police Officer based on the undisputed fact that he failed to submit his Experience and Education (E&E) form online prior to the filing deadline.

DECISION ON RESPONDENT’S MOTION TO DISMISS

On November 29, 2024, the Appellant, Ernest S. Bell, a Police Officer with the City of Brockton, MA Police Department (BFD), appealed to the Civil Service Commission

(Commission)¹, after the state's Human Resources Division (HRD) scored the Experience & Education (E&E) component of the September 21, 2024 statewide Police Sergeant promotional examination. I held a remote pre-hearing conference on this appeal on December 17, 2024, at which time HRD's Pre-Hearing Memorandum was deemed a Motion to Dismiss, which the Appellant opposed. After carefully reviewing the submissions of the parties, I have determined that the Appellant has not raised sufficient issues of fact and law to warrant a full evidentiary hearing and that HRD's Motion to Dismiss should be allowed.

UNDISPUTED FACTS

Based on the submission of the parties, the following facts are not disputed:

1. The Appellant, Ernest S. Bell is a BPD Police Officer.
2. The Appellant took the September 21, 2024 statewide Police Sergeant's promotional examination administered by HRD.
3. The statewide Police Sergeant's promotional exam contained a Technical Knowledge (TK) component, a Situational Judgement Test (SJT) component, and an E&E component.
4. The E&E component required the submission of an online claim form, together with certain supporting documentation to claim points for E&E credit in three categories: Job Experience, within and outside the candidate's current department; Certifications/Training/Licenses; and Education.
5. The deadline to submit the on-line E&E claim form for the September 21, 2024 examination expired at 11:59 P.M. on September 28, 2024. At that time, the E&E link is automatically programmed to close and no longer is accessible to candidates.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

6. On two separate occasions prior to the deadline for filing the on-line E&E claim form, HRD provided all candidates, including the Appellant, with information detailing the obligation to submit an on-line E&E claim form as a required component of the September 2024 examination, and provided specific instructions on how to access, complete and confirm submission of the E&E claim form.

7. The Appellant acknowledged that he “did receive numerous messages about the [] deadline date, knowing that date (9/28/24) was a week after the examination.”

8. The Appellant did not submit an E&E claim form prior to the deadline required by the instructions for the September 21, 2024 examination. Rather, he “tried to update my E&E account on 09/26/2024, however, the website only allowed me to update my actual Civil Service account, which I did on 09/28/2024. My E&E has not changed over the past few years.”

9. As a result of his failure to submit a completed on-line E&E claim, the Appellant received an INCOMPLETE score on the E&E component. and an overall failing score on the examination. His name does not appear on the current eligible list.²

APPLICABLE LEGAL STANDARD

The Commission may, on motion or upon its own initiative, dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR

² The Appellant had been ranked second on the prior eligible list with which the current eligible list was merged. Under the law in effect at the time of the September 2024 promotional examinations, the applicable law (G.L. c. 31, § 25) provided that when two lists are merged and candidates took both examinations, the score on the “last examination taken” replaced the score from the prior examination. As of November 2024, the law was changed (Section 127 of c. 238 of the Acts of 2024) so that a candidate’s “highest examination score achieved” on the two examinations could be used to rank the candidate on the merged list. As the examination in this appeal was administered prior to the law change, HRD applied the law as it existed at the time of the examination.

1.01(7)(g)(3). A motion to dispose of an appeal, in whole or in part, via summary decision may be allowed by the Commission pursuant to 801 C.M.R. 1.01(7)(h) when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). See also Mangino v. HRD, 27 MCSR 34 (2014) and cases cited (“The notion underlying the summary decision process in administrative proceedings parallels the civil practice under Mass.R.Civ.P.56, namely, when no genuine issues of material fact exist, the agency is not required to conduct a meaningless hearing.”); Morehouse v. Weymouth Fire Dept, 26 MCSR 176 (2013) (“a party may move for summary decision when . . . that there is no genuine issue of fact relating to his or her claim or defense and the party is entitled to prevail as a matter of law.”)

ANALYSIS

The undisputed facts, viewed in a light most favorable to the Appellant, establish that this appeal must be dismissed.

Section 22 of Chapter 31 of the General Laws prescribes that “[t]he administrator [HRD] shall determine the passing requirements of examinations.” According to the Personnel Administration Rules (PAR) 6(1)(b), “[t]he grading of the subject of training and experience as a part of a promotional examination shall be based on a schedule approved by the administrator [HRD] which shall include credits for elements of training and experience related to the position for which the examination is held.” Pursuant to Section 24 of Chapter 31, “. . .the commission shall not allow

credit for training or experience unless such training or experience was fully stated in the training and experience sheet filed by the applicant at the time designated by the administrator [HRD]”.

Here, the Appellant acknowledged that he did not follow HRD’s instructions for submitting an E&E claim. Nor does it appear disputed that the Appellant knew that, when he encountered technical difficulties submitting his E&E claim, he needed to inform HRD of this problem by email and to attach all the necessary documents needed to process his claim prior to the 11:59 pm deadline. He does not appear to have done so. While I am not unsympathetic to the Appellant’s argument here, following instructions is a reasonably required part of the examination process administered by HRD, especially as it applies to a candidate for a police sergeant’s supervisory position, where following instructions is an inherently important job function.

The Commission generally defers to HRD’s expertise and discretion to establish reasonable requirements, consistent with basic merit principles, for crafting, administering, and scoring examinations. In deciding prior appeals, the Commission has concluded that, as a general rule, HRD’s insistence on compliance with its established examination requirements for claiming and scoring training and experience credits was neither arbitrary nor unreasonable. See, e.g., Kiley v. HRD, 36 MCSR 442 (2023); Evans v. HRD, 35 MCSR 108 (2022); Turner v. HRD, 34 MCSR 249 (2022); Amato v. HRD, 34 MCSR 177 (2021); Wetherbee v. HRD, 34 MCSR 173 (2021); Russo v. HRD, 34 MCSR 156 (2021); Villavizar v. HRD, 34 MCSR 64 (2021); Holska v. HRD, 33 MCSR 282 (2020); Flynn v. HRD, 33 MCSR 237 (2020); Whoriskey v. HRD, 33 MCSR 158 (2020); Bucella v. HRD, 32 MCSR 226 (2019); Dupont v. HRD, 31 MCSR 184 (2018); Pavone v. HRD, 28 MCSR 611 (2015); and Carroll v. HRD, 27 MCSR 157 (2014).

In sum, consistency and equal treatment are important hallmarks of basic merit principles under civil service law. The present appeal presents no basis to deviate from its well-established line of decisions directly on point.

CONCLUSION

For the reasons stated above, HRD's Motion to Dismiss is *allowed*, and the Appellant's appeal under Docket Number B2-24-180 is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Markey, McConney and Stein, Commissioners [Dooley- Absent]) on February 20, 2025.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:
Ernest S. Bell (Appellant)
Erik Hammarlund, Esq. (for Respondent)